IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2462 OF 1992

Shri Dattu Yashwant Patil
& Ors. ..Petitioners

versus

Sharad Dhondopant Kulkarni ..Respondent

Mr. S. V. Sadavarte for the Petitioners.

Mr. V. M. Limaye for the Respondent.

CORAM : D. G. DESHPANDE, J.

DATE : 10TH OCTOBER, 2006

ORAL ORDER :

1. Heard learned counsel for the Petitioners and the Respondent.

2. Petitioners are the tenants and the Respondent is the landlord. Litigation under the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the "Tenancy Act") is going on between them since 1958-59. It is not necessary to give history of all that litigation. Suffice it to say that present proceedings are the

outcome of action by the tenant under Section 32G of the Tenancy Act.

3. Originally the land in question was of a widow, therefore proceeding under Section 32G of the Tenancy Act was postponed during her lifetime by an order dated 6.11.1959. Landlady expired in 1962 and therefore the tenant initiated proceedings under Section 32G as against the present respondent, who was successor in title of Sakhubai. The question is whether before exercising his right under Section 32G, the tenant had given intimation to the respondent. The Additional Tahsildar and A.L.T. Panhala held in favour of the tenant on the basis of a noting made in the enquiry i.e. original proceedings under Section 32G wherein the tenant has contended as under :

> **"The landlady is a widow. She got this land by heirship on 23.2.1955 and therefore the purchase of the land by the tenant should be stayed or suspended."**

This statement of the tenant was treated by the Additional Tahsildar and A.L.T. Panhala in the proceedings as intimation to the landlord and application under Section 32G of the Tenancy Act,

was allowed.

4. Thereafter, the landlord filed an Appeal before the Sub Divisional Officer, Shahuwadi. He dismissed the Appeal and confirmed the order of the Tahsildar. Landlord filed Revision before the Maharashtra Revenue Tribunal (MRT), and, MRT allowed the Revision and set aside the orders of both the courts below, hence this petition.

5. Mr. Sadavarte, repeatedly contended that if the proceedings under Section 32G were initiated in the beginning and admittedly it mean that the tenant wanted to purchase the land but the proceedings were suspended or kept in abeyance because the landlady was widow, therefore, according to him, the statement of the tenant, reproduced above, from those proceedings is sufficient compliance to Section 32G giving intimation to the present landlord- the respondent. He relied upon the judgments of this court reported in **AIR 1986 Bombay 86 Shrikrishna Subhana Horambale and others vs. Shripad Jiwaji Apate (deceased by L.R.s) and others** and **AIR 1959 Supreme Court 459 Ram Ram Narain Medhi vs. State of Bombay.**

6. As against this, the counsel for the respondents relied upon my unreported judgment in **Writ Petition No. 4796 of 1992 dated 20.9.2006 Vithu Rama Kaingade, since deceased by his heirs and legal representatives Nivrutti Vithu Kaingade & Ors. vs. Sharad Dhondo Kulkarni** and another judgment of mine reported in **1999 Vol. 101(3) Bom. L.R. 213 Maruti Narayan Chavan since deceased by his heirs and L.Rs. vs. Ramchandra Bhau**.

7. Judgment of this court relied upon by Mr. Sadavarte, for the petitioners in Shrikrishna's case is not applicable to the facts of the present case. In that case the tenant had expressed willingness to purchase. In paragraph 8 of the said judgment it is observed as under:

> **"Reverting then to the position here, there is no dispute that more than once, the tenants have unequivocally expressed their willingness to purchase the suit land."**

In the present case there is no express willingness of the tenant to purchase the land. Statement of the tenant recorded by the Tribunal and reproduced by me above, cannot be interpreted as an express

willingness to purchase the land. Mere filing of the proceedings under Section 32G is not sufficient compliance to requirement of Section 32F. In fact in that case the order was there in favour of the tenant for purchasing the land and he has paid instalments but the Tahsildar found that tenant has failed to give notice under Section 32F and therefore the purchase of the land was ineffective.

8. In the case of Maruti Narayan Chavan decided by me and referred to above all the relevant provisions of sub section 2 of section 32F, 32G to 32R were considered and it was held by me that the right given to the landlord under Section 31 has nothing to do with the right given to the tenant under Section 32F for purchasing the land and consequently it has to be held that the tenant was under legal obligation or statutory duty to give notice of his intention to purchase the land as contemplated under Section 32F. In my unreported judgment, referred to above, similar question arose i.e. initiation of proceedings under Section 32F but no express intimation was given by the tenant to the landlord. It was held and observed by me in paragraph 6 as under:

> **"From both these provisions 32F (a) and (1A) and the proviso, it is clear that it is obligation upon the tenant to give intimation to the landlord."**

In the instant case, that is, before me there is no express intimation and there is no compliance to provisions of Section 32F.

9. Mr. Sadavarte relying upon the judgment of Ram Ram Narain Medhi, referred to above, contended that if the land vests in the tenant then his right is in defeasible. In other words he wanted to contend whether a tenant gives intimation under Section 32F or not is of no consequence. It is difficult to accept this submission but it is true that in the aforesaid judgment, the Supreme Court held that:

> **".....That the title to the land which was vested originally in the landlord passes to the tenant on the tiller's day or the alternative period prescribed in that behalf. This title is defeasible only in the event of the tenant failing to appear or making a statement that he is not willing to purchase the land or committing default in payment of the price thereof as determined by the Tribunal."**

10. The judgment has to be read in the background of the facts of the case and the law

points involved or the issues involved. In this judgment of the Supreme Court nothing was shown to me that legality and constitutional validity of Section 32F was in challenge or the Supreme Court was concerned with the legality or validity of Section 32F of the Tenancy Act. The observations in the aforesaid judgment of the Supreme Court were when there was a challenge to the virus of the Tenancy Act. Therefore, observations of the Supreme Court relied upon by Mr. Sadavarte, cannot be of any help to him when we are concerned with the specific provision of Section 32F and its non compliance. In this view of the matter, no fault can be found with the judgment and order of the MRT, consequently, the petition is dismissed. Rule is discharged. Stay, if any vacated.

(D.G. DESHPANDE, J.)